

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

James C. Smith,

Case No. 18-cv-2555 (WMW/LIB)

Plaintiff,

v.

**ORDER ADOPTING AS MODIFIED
REPORT AND RECOMMENDATION**

Warden of the Duluth Prison Camp,

Defendant.

This matter is before the Court on the April 23, 2019 Report and Recommendation (R&R) of United States Magistrate Judge Leo I. Brisbois. (Dkt. 10.) The R&R recommends denying Plaintiff James C. Smith's petition for a writ of habeas corpus. No objections to the R&R have been filed. In the absence of timely objections, this Court reviews an R&R for clear error. *See* Fed. R. Civ. P. 72(b); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam).

Having conducted its review, the Court finds no clear error as to the R&R's determination that the Court lacks subject-matter jurisdiction to address Smith's claims. But because the Court lacks subject-matter jurisdiction, the dismissal of this action must be *without* prejudice. *See Hart v. United States*, 630 F.3d 1085, 1091 (8th Cir. 2011) (modifying district court's dismissal to be without prejudice because the district court lacked subject-matter jurisdiction and collecting cases). The Court modifies the R&R accordingly.

Based on the R&R, the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED:**

1. The April 23, 2019 R&R, (Dkt. 10), is **ADOPTED AS MODIFIED;**
2. Plaintiff James C. Smith's petition for a writ of habeas corpus, (Dkt. 1), is **DENIED;** and

3. This action is **DISMISSED WITHOUT PREJUDICE.**

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 24, 2019

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge